

SENATE RESOLUTION 32

By Burchett

A RESOLUTION urging the United States Congress to replace the outdated Fast Track system.

WHEREAS, democratic, accountable governance in the States generally, and specifically the authority granted to the legislative branch by Tennessee's Constitution, is being undermined by international commercial and trade rules enforced by the World Trade Organization (WTO) and established by the North American Free Trade Agreement (NAFTA), and is further threatened by similar provisions in an array of pending trade agreements; and

WHEREAS, today's "trade" agreements have impacts which extend significantly beyond the bounds of traditional trade matters such as tariffs and quotas, and instead grant foreign investors and service providers certain rights and privileges regarding acquisition of land and facilities and regarding operations within a State's territory, subject State laws to challenge as "non-tariff barriers to trade" in the binding dispute resolution bodies that accompany the pacts, and place limits on the future policy options of State legislatures; and

WHEREAS, NAFTA and other U.S. Free Trade Agreements grant foreign firms new rights and privileges for operating within a State that exceed those granted to U.S. businesses under State and federal law; and

WHEREAS, NAFTA already has generated "regulatory takings" cases against State and local land use decisions, State environmental and public health policies, adverse State court rulings, and State and local contracts that would not have been possible in U.S. courts; and

WHEREAS, when States are bound to comply with government procurement provisions contained in trade agreements, common economic development and environmental policies, such as buy-local laws, prevailing wage laws, policies to prevent offshoring of State jobs, as well as recycled content laws, could be subject to challenge as violating the obligations in the trade agreements; and

WHEREAS, recent trade agreements curtail State regulatory authority by placing constraints on future policy options; and

WHEREAS, the WTO General Agreement on Trade in Services (GATS) could undermine State efforts to expand health care coverage and rein in health care costs, and places constraints on State and local land use planning and gambling policy; and

WHEREAS, new General Agreement on Trade in Services (GATS) negotiations could impose additional constraints on State regulation of energy, higher education, professional licensing, and more; and

WHEREAS, despite the indisputable fact that international trade agreements have a far-reaching impact on State and local laws, federal government trade negotiators have failed to respect States' rights to prior informed consent before binding States to conform State law and authority to trade agreement requirements and have refused even to copy State legislatures on key correspondence; and

WHEREAS, the current encroachment on State regulatory authority by international commercial and trade agreements has occurred in no small part because U.S. trade policy is being formulated and implemented under the Fast Track Trade Authority procedure; and

WHEREAS, Fast Track eliminates vital checks and balances established in the U.S. Constitution by broadly delegating Congress' exclusive Constitutional authority to set the terms of trade over to the Executive Branch, such that the Executive Branch is empowered to negotiate broad-ranging trade agreements and to sign them prior to Congress voting on the agreements; and

WHEREAS, the ability of the Executive Branch to sign trade agreements prior to Congress' vote of approval means Executive Branch negotiators are able to ignore congressional negotiating objectives or States' demands, and neither Congress nor the State has any means to enforce any decision regarding what provisions must be contained in every U.S. trade agreement or what provisions may not be included in any U.S. trade agreement; and

WHEREAS, federal trade negotiators have ignored and disrespected States' demands regarding whether or not States agree to be bound to certain non-tariff trade agreement provisions; and

WHEREAS, Fast Track also circumvents normal congressional review and amendment committee procedures, limits debate to twenty hours total, and forbids any floor amendments to the implementing legislation that is presented to Congress to conform hundreds of U.S. laws to trade agreement obligations and to incorporate the actual trade agreement itself into U.S. federal law, which preempts State law; and

WHEREAS, Fast Track Authority is not necessary for negotiating trade agreements as demonstrated by the existence of scores of trade agreements, including major pacts such as the agreements administered by the WTO, implemented in the past thirty years without use of Fast Track; and

WHEREAS, Fast Track, which was established in 1974 by then-president Richard Nixon when trade agreements were limited to traditional matters such as tariffs and quotas, is now woefully outdated and inappropriate given the diverse range of non-trade issues now included in “trade” agreements that broadly affect federal and State non-trade regulatory authority; and

WHEREAS, the current grant of Fast Track expires in June 2007; now, therefore,

BE IT RESOLVED BY THE SENATE OF THE ONE HUNDRED FIFTH GENERAL ASSEMBLY OF THE STATE OF TENNESSEE, that this Body respectfully requests that the United States Congress create a replacement for the outdated Fast Track system, so that U.S. trade agreements are developed and implemented using a more democratic, inclusive mechanism that enshrines the principles of federalism and State sovereignty.

BE IT FURTHER RESOLVED, that this new process for developing and implementing trade agreements should include an explicit mechanism for ensuring the prior informed consent of State legislatures before States are bound to the non-tariff terms of any trade agreement that affects State regulatory authority, so as to ensure that the United States Trade Representative respects the decisions made by the States.

BE IT FURTHER RESOLVED, that enrolled copies of this resolution be immediately transmitted to the Honorable George W. Bush, President of the United States, Ambassador Susan Schwab, United States Trade Representative, the President and the Secretary of the United States Senate, the Speaker and the Clerk of the United States House of Representatives, and each member of Congress from the State of Tennessee.

